

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

SIMMS SHOWERS LLP

Plaintiff,

v.

MICHAEL JONES

Defendant.

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**Case No. 1:23-cv-02827 SAG**

**PLAINTIFF’S RESPONSE TO ORDER TO SHOW CAUSE**

The Plaintiff, Simms Showers LLP, through counsel, responds to the Court’s order to show cause as to why this matter should not be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m) and Local Rule 103.8.a and states as follows:

1. The Court issued an Order to Show Cause pursuant to Federal Rule of Civil Procedure 4(m) and Local Rule 103.8.a, noting that the Complaint 90 days had passed since the filing of the Complaint and that service had not been returned.
2. This response was filed within fourteen days of the Court’s order and is therefore timely.
3. As noted in the Complaint, the Defendant is a resident of Nicaragua, a foreign country.
4. Rule 4(m), which prescribes a 90 day period for service after a complaint is filed, “does not apply to service in a foreign country”; therefore, on its own terms Rule 4(m) does not mandate dismissal for lack of service.
5. Local Rule 103.8.a lacks this exemption; however, there are no reported cases

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interpreting Local Rule 103.8.a, and it is Plaintiff's contention that the Local Rule should be interpreted to incorporate the exemption found in Rule 4(m).

6. However, even if the exemption of Rule 4(m) does not apply to the Local Rule, the Local Rule provides that the Court "may" dismiss the action without prejudice rather than requiring that the Court "must" dismiss the action.

7. In the matter *sub judice*, the Court should not dismiss the action due to the difficulties of serving a defendant in a foreign country generally, and as particular to this Defendant, the difficulties with serving him in the past.<sup>1</sup>

Wherefore, the Plaintiff Simms Showers LLP, respectfully requests that the Court refrain from dismissing this matter pursuant to Federal Rule of Civil Procedure 4(m) and Local Rule 103.8.a

Respectfully submitted,

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<sup>1</sup> For example, in case no. 1:17-cv-02150 RDB (a predecessor to this matter), the same difficulties were encountered leading to a motion for alternative service.